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**OFFICE OF PETITIONS**

In re Application of  
Brigstock, et al. :  
Application No. 09/113,924 :  
Filed: July 9, 1998 :  
Attorney Docket No. 08766/003002 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 25, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed March 15, 2001. Accordingly, this application became abandoned on June 16, 2001. A Notice of Abandonment was mailed on October 25, 2001.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. At 53160 and 53178, 1203 Off. Gaz Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

Petitioner submitted a Request For Continued Examination (RCE) on July 25, 2005, with the instant petition. However, the prosecution in the application must be closed before a RCE may be submitted. As the Office action of March 15, 2001 was not final, the submission of a RCE is not an appropriate response at this time since prosecution in the application is not closed. As such, the RCE, filed July 25, 2005 is considered improper. However, a reply to the non-final Office action was submitted with the improper RCE. The amendment will be entered and considered under 37 CFR 1.111.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$510.00 extension of time submitted with the petition on July 25, 2005 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account no. 07-1896.

The file is being forwarded to Technology Center 1600 for review of the amendment, submitted July 25, 2005, *in due course*.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.



Edward J. Tannouse  
Petitions Attorney  
Office of Petitions/Patent  
Office of the Deputy Commissioner  
for Patent Examination Policy

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REQUEST FOR PATENT FEE REFUND

1 Date of Request: 10/4/05 2 Serial/Patent #: 09/113,924

3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
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Amendment			\$							
<input checked="" type="checkbox"/> Extension of Time		<u>7/25/05</u>	<u>\$ 50</u>							
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9 <table border="1"><tr><td>0</td><td>7</td><td>—</td><td>1</td><td>8</td><td>9</td><td>6</td></tr></table>				0	7	—	1	8	9	6
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<input checked="" type="checkbox"/> No Fee Due (Explanation):										
<u>Ext not <del>ext</del> necessary</u> <u>RCE improper</u>										

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APPROVED: Alicia Kelly

TITLE: Pat. Atty.

PHONE: 232-28

DATE: 10/5/05

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